

A F T E R N O O N S E S S I O N

PANEL THREE

ETC DESIGNATION PROCESS

COMMISSIONER ABERNATHY: Again, thanks to everyone for sticking around as we deal with our primal issue, which the ETC designation process. And we're very fortunate on this panel to have two commissioners who've also agreed to participate, explaining what their states are doing as well as other participants.

So, again, we'll start at this end of the table and move on down and have all of you give us your presentations. And we will start off with Commissioner Elliott Smith, who's from the Iowa Utilities Board. Thanks for joining us.

MR. SMITH: You bet. Thank you very much for this opportunity to appear before the joint board this afternoon. I'm pleased to be able to participate as representing my own opinion, not necessarily that of the board as a whole, just to make that disclaimer right out front.

I would like to take a second, though, to sort of explain Iowa's unique telecom landscape. There are approximately 153 wire line incumbent local exchange carriers currently operating in Iowa. I believe that puts the state -- ranks the state as having the most ILECs.

1 Now only the three largest carriers are regulated
2 by our board. The average size of these small companies is
3 approximately 700 access lines generally serving the rural
4 areas in the state. The complexity of this market is
5 compounded by the addition of 36 competitors who have been
6 approved with ETC designations. And, again, most of these
7 serve the rural areas.

8 The majority of the small incumbent companies are
9 experiencing either no access line growth, and in some
10 cases, slight reductions. This appears to be caused by a
11 number of factors, three of which are slow population growth
12 in Iowa, migration from the rural to urban areas, and
13 deployment of advance services, which no longer utilize
14 second or additional voice lines.

15 In the absence of access line growth, these
16 companies are finding it difficult to reduce their average
17 cost per customer. Throughout Iowa, most customers have the
18 option of obtaining voice service from at least one wire
19 line and one wireless service providers. Although these
20 services may not be interchangeable necessarily.

21 At this time, it appears most wireless service
22 providers have positioned themselves as an alternative to
23 long distance. Consumers are using wireless more as a
24 compliment to their traditional wire line service.

25 It's important to note that our ILEC industry in

1 Iowa has made substantial infrastructure investments and has
2 developed a long history of providing dependable and quality
3 service which has been considered essential by both federal
4 and state policy makers.

5 Today I'd like to offer my comments on three
6 issues we see as crucial to the universal service fund and
7 the ETC designation process. They are the designation of
8 wireless carriers' service area for ETC status, the
9 application uniform service quality standards, and the
10 portability of universal service funds.

11 In Iowa -- looking at the first issue,
12 designation of wireless carriers' service area -- in Iowa,
13 the wire line exchange boundaries have evolved over the
14 decades based on the ownership of telecommunications
15 facilities in the location of the customers being served.

16 These exchanges are a regular in shape and do not
17 follow a traditional county or municipal boundary lines.
18 Often these exchanges -- these companies -- often companies
19 serve multiple exchanges and are separate. It appears as
20 though the exchange map looks like a jigsaw puzzle at times.
21 Moreover, many of the established wire line exchanges
22 include both urban and rural areas.

23 In granting ETC status to wire line competitors,
24 the Iowa Utilities Board has been very concerned about the
25 potential for cream skinning by the CLECs. Some CLECs have

1 been very clear that they would prefer to serve low-cost
2 urban customers, but the IUB, the Iowa Utilities Board, has
3 typically required that the CLEC offer to serve all eligible
4 customers within the historic Iowa exchange.

5 In contrast, as you know, wireless service areas
6 are set by the FCC based on county lines. Wireless and wire
7 line service areas do not correspond as a result, and often
8 wireless service providers cannot cover the entire wire line
9 exchange, let alone study areas, because of the irregular
10 shape of the wire line exchanges, which are limited to the
11 county by county licensing.

12 This difference in service area is not something
13 the wireless carrier has chosen, rather it's now one of the
14 FCC's licensing practices. Because it's not a result of the
15 carrier's decision, it does not appear to raise the same
16 concern as related to cream-skimming.

17 As a result, the Iowa Utilities Board is
18 considering rules currently that would allow wireless
19 service providers to be designated as ETCs, even though the
20 wireless service area may be less than the wire line
21 incumbent historical service area.

22 Allowing these wireless carriers the opportunity
23 to provide local service to parts of exchanges or wire
24 centers may help the provider maximize the use of its
25 wireless serving area license and give more local service

1 choices to consumers.

2 The second issue, the uniform service quality
3 standards. Reasonable service quality standards are
4 imperative, of course, to providing dependable, high quality
5 local service to our Iowa customers.

6 The joint board has recommended that the FCC no
7 impose federal, technical or service quality standards as a
8 condition of receiving universal service report, and I am
9 generally in agreement with these recommendations of the
10 board. The FCC should not impose federal service quality
11 standards because these issues are best handled by the
12 individual states.

13 Service standard requirements vary by state and
14 it would be difficult for the FCC to establish uniform
15 national requirements without imposing on the regulatory
16 authority of the individual states. I would suggest that
17 the requirement of service quality measurements should be
18 applied uniformly to all ETC carriers within each individual
19 state to the extent it's technologically feasible to do so.

20 Competitive ETCs should provide service meeting
21 the same or similar quality standards as traditional wire
22 line providers before the competitive ETC can receive
23 universal service funding. Iowa is currently in the initial
24 stages of proposed rule making to deal with these issues.

25 Competitive ETCs should also be required to

1 provide the list of minimum services as is required of the
2 incumbent wire line carriers. In addition to the standard
3 list of support services, others could include things such
4 as a 911. This requirement would place all carriers on
5 equal footing when providing basic, competitive services in
6 the state.

7 Finally, portability of the universal service
8 funds. This issue is one of the biggest challenges facing
9 the universal service fund. Wireless -- the majority of the
10 150-plus small rural companies in Iowa receive high-cost
11 support payments. This is an indication of substantial per
12 customer investment and expense for these organizations.

13 Wireless ETC service providers are receiving
14 high-cost universal service support payments based upon the
15 costs of the incumbent carrier. Wireless carriers don't
16 have the same facilities or investments as these incumbent
17 wire line carriers.

18 Cost for providing wireless service generally
19 have not been furnished to regulators, but on the surface it
20 appears that the cost of providing the service by these
21 wireless carriers may be less than the wire line carriers.
22 On a per customer basis anyway. Therefore, it may be
23 appropriate that the levels of support paid to wireless
24 carriers or the CLECs should be something less than the
25 current support payments paid to the ILEC's.

1 I encourage the joint board to consider universal
2 service fund support payments based on -- paid on the basis
3 of each carriers' cost to serve provided that the ETC or
4 CLECs' costs are below that of the incumbent.

5 With that, that concludes my comments, and I'll
6 certainly be interested in answering the questions you might
7 have. Thank you very much for this opportunity.

8 COMMISSIONER ABERNATHY: Thank you, Commissioner
9 Smith. And now we'll turn to the Honorable Ann Boyle, who's
10 with the Nebraska Public Service Commission. And, again,
11 thank you for staying around an extra day and giving us your
12 time.

13 MS. BOYLE: Thank you, and it is an honor to
14 appear before you. Today we are here as we continue to
15 attempt to provide the twin goals of competition and
16 universal service at one of the most economically challenged
17 times in recent history.

18 In the early stages of review, it seemed that --
19 and by that, I mean the review of providing service and in a
20 competitive market -- it seemed that the lure of competition
21 overshadowed the equally important goal of universal
22 service.

23 Today the balance has shifted and the question
24 has become should universal service support more than one
25 network? Some of us ask if universal service is used to

1 be -- it should be used to subsidize competition. All of
2 know those are difficult questions to answer as we continue
3 to live in an ever changing world that cannot turn its back
4 on the advances in technology.

5 Public interest is difficult to define. I would
6 be terribly concerned that a guideline or guidelines -- it
7 could be construed as hard and fast definitions -- would be
8 so limiting to states that we are unable to work with them
9 in the fluid environments in which we live.

10 Perhaps a minimal set of standard could be
11 considered, but it will be with great reluctance that I
12 would make such recommendations. Frankly, I believe the
13 public interest is in some way spelled out in the Act. And
14 it is also common sense in how we construe the public
15 interest.

16 Perhaps there is another way to look at achieving
17 our twin goals. As we know, states have been criticized
18 recently -- and I feel in some respects, improperly -- for
19 too loosely defining public interest from granting ETC
20 status. However, we are disconnected when we grant ETC
21 status from any oversight of the fund -- of the federal
22 fund.

23 A court decision in North Dakota found that
24 states are not responsible for sustainability of the federal
25 fund and such an analysis cannot be part of our

1 determination. With that disconnection, we are unable to
2 determine one of the factors which are nearly always
3 considered in every decision making, and that is the over
4 all cost of our decision.

5 I suggest that the FCC relook at how funds are
6 allocated. Using a formula to be determined -- and this is
7 only a suggestion based on, perhaps, wire center -- a
8 certain amount could be allocated to each state on an annual
9 basis or whatever time frame that is considered. But at
10 least the state will be aware of how much has been allocated
11 to that state. They would then have the missing piece of
12 determining public interest, while continuing to attempt to
13 address twin goals of universal service.

14 And, in addition, states would be more
15 accountable to how much funding there is and we would not be
16 thinking that we are just continuing to allow carriers to
17 get into -- to be given ETC status, and feeling that it's
18 all going into a black hole that can never be filled because
19 we don't know, at the end of the day, what my counterpart in
20 Iowa's doing, or in New York or California, or anywhere
21 else.

22 There are also suggestions that some states --
23 and this is where the criticism comes from -- of simply
24 granting ETC status because it allows them to get more money
25 out of the fund. There have also been comments made, and

1 they are not -- they're only -- I consider rumor type
2 comments -- but the comment is this, that Wall Street is
3 telling wireless carriers to come in and go after their ETC
4 status in all the states because the money is available.
5 And if they don't get it, they were downgrade their stock.

6 So they're caught in a trap. Are they going to
7 downgrade their stock on Wall Street or are they going to go
8 after the after the funding. I think it creates terrible,
9 terrible conflicts for the state as for the carriers.

10 And as recently as only two weeks ago, we had a
11 carrier come in who was doing exactly that. At the end of
12 his testimony he said, you know, Commissioners, it's only
13 \$5,000. And so I said to it, it is \$5,000 per month, isn't
14 that correct? Yes. And I said, aren't you applying in
15 about 15 other states? Yes.

16 Nebraska, one of the smaller states that
17 they're -- where they're applying, you can easily see -- do
18 the math -- that's a million dollars a year for one carrier
19 because, I think -- part of which is Wall Street's
20 determination -- that they don't go after money that's
21 available, their stock is downgraded. It is not the first
22 time that I think pressure from Wall Street has forced
23 companies into some things that, perhaps, they would not do
24 otherwise.

25 That's kind of a formula or working with the

1 states and either allocating or telling us how much money is
2 available per state, but also help make us much more aware
3 of the very subtle changes that take place in the industry
4 because of new technologies, which almost unnoticeably start
5 to deplete revenues until we are in a state of alarm, which
6 is where we are today.

7 We all know that many government programs are
8 determined by formula and funded state by state. So this is
9 not a new idea. It would be a very different way of
10 disbursement, and it would require even greater partnership
11 between the FCC and the states.

12 In the interest of time, I'll move on to whether
13 or not regulatory parity should be a guiding principle. The
14 answer is yes, it should be. The question is, should parity
15 be determined on requiring ETCs to offer it the same
16 services and quality and should -- or should it be
17 determined by providing fewer funds for fewer services and
18 lower standards.

19 I believe that we should always look at things
20 through the eyes of the customer. The customer doesn't
21 understand the fine nuances of cost allocations based on
22 lower standards. They only know that they expect to get a
23 quality product and good service for their investment of
24 their hard earned cash. Consumers should not be short
25 changed on a service or options.

1 Furthermore, without further information, it
2 seems when we break from uniformity, we sometimes create
3 bureaucratic nightmares which require constant tweaking to
4 ensure that is fairness in what we're doing.

5 And with that, I thank you for the opportunity to
6 be here today.

7 COMMISSIONER ABERNATHY: Thank you, Commissioner.
8 And now we'll turn to Mikal Thomsen, who's with Western
9 Wireless, and thanks for joining us here.

10 MR. THOMSEN: Good afternoon. I'm president of
11 Western Wireless Corporation, the largest rural wireless
12 cellular service provider in the U.S. and the first wireless
13 carrier to be designated an ETC.

14 We began seeking designation as an ETC in 1998,
15 and are now the largest competitive ETC in the nation
16 eligible for universal service funding in 14 states and on
17 the Pine Ridge Indian Reservation.

18 Western believes that, in general, the FCC and
19 state commissions have conducted a thorough analysis of
20 whether the public interest is served prior to designating
21 additional ETCs in areas served by rural telephone
22 companies.

23 Contested evidentiary hearings were conducted on
24 almost all of Western Wireless' 15 ETC applications. The
25 average length of state commissioned ETC proceedings was 21

1 months. State commissions considered whether the public
2 interest would be served by the designation of an additional
3 ETC, and provided all parties every opportunity throughout
4 the contested evidentiary process for the presentation of
5 evidence in the public interest.

6 The cost of prosecuting an ETC application, the
7 uncertainty of the regulatory process and the length of time
8 to obtain a final ruling are significant barriers to entry
9 into the universal service market. The joint board should
10 reject suggestions to impose service requirements beyond the
11 list of covered services.

12 Every carrier must be able to distinguish itself
13 in the marketplace in order to succeed. It does this
14 through its rates, terms and condition, service offerings
15 and service availability. Incumbent carriers, which have
16 market power, and competitive carriers, which do not, should
17 not be subject to the same regulations aimed at controlling
18 incumbent market power.

19 If a competitive carrier's service quality is
20 sub-par or its prices are too high, consumers will not use
21 it. The requirements with which universal service
22 recipients must comply already apply with equal force to all
23 carriers.

24 The goal of preserving and advancing universal
25 service will not be furthered without a competitive

1 universal service system. Consumers in all markets should
2 receive the benefits of a competitive marketplace.

3 The current funding mechanism for rural telephone
4 company areas, which is solely based on the incumbent
5 carrier's embedded cost structure is incompatible with an
6 efficient competitively neutral system as envisioned in the
7 1996 Telecom Act.

8 A funding system based on the most economically
9 efficient technology of serving rural consumers will provide
10 the proper incentives for carriers operating in a
11 competitive universal service market.

12 My three minutes are up. I'll hand it over.

13 COMMISSIONER ABERNATHY: Do you have some -- you
14 can --

15 MR. THOMSEN: I'm done.

16 COMMISSIONER ABERNATHY: Okay, let's move on then
17 to Jeff Glover, who's with the Independent Telephone and
18 Telecommunications Alliance. Thank you, Mr. Glover.

19 MR. GLOVER: Good afternoon. My name is Jeff
20 Glover. I'm vice president of External Relations for
21 Century Tel.

22 I appreciate the opportunity to appear before you
23 today on behalf of the Independent Telephone and
24 Telecommunications Alliance, otherwise known as ITTA. ITTA
25 is a group of 13 midsize ILECs providing service to more

1 than 10 million customers in 40 states.

2 It appears to us that in the debate over
3 telecommunications policy, the consumer is often overlooked.
4 But the Act puts the consumer first. Especially in smaller
5 markets where the economics are more fragile, consumers are
6 more vulnerable and universal service is, therefore, at
7 greater risk when change is introduced.

8 In the ETC designation process, section 214(e)
9 distinguishes between urban and rural markets. The
10 designation of CETCs was made discretionary, not automatic
11 in rural areas. The Act requires an analysis of the impact
12 of any such designation and an affirmative finding that such
13 designation would serve the public interest.

14 In many instances the rural service area is
15 redefined at the request of the CETC. But this requires a
16 public interest finding, not just by the state, but also by
17 the FCC. And these decisions should focus on preventing
18 service disruptions and maintaining affordable service in
19 rural markets.

20 The interest of rural consumers are not being
21 served by the current rules. Wireless ETCs are being
22 designated in some states without regard to the impact on
23 local markets. And without being required to offer service
24 to the entire market or offer a minimum level of service
25 such as unlimited local dialing or enhanced 911 capability.

1 At the same time, they are receiving support at the same
2 per-line level as the ILEC, the carrier of last resort for
3 the entire study area.

4 The consumer is the one who will inevitably pay
5 for the inefficiencies of the current system.

6 ILECs will not be able to sustain infrastructure
7 investment and an environment where the CETCs get the same
8 support the ILECs receive without any of the obligations the
9 ILECs have undertaken. Meanwhile, CMRS carriers have only
10 to submit their existing customer list and receive support
11 without doing anything whatsoever to enhance service to
12 consumers. Where is the consumer going to fit in this?

13 In my written testimony, I describe a number of
14 flaws with the current designation process. Designations
15 are based on inconsistent criteria. Too often, the only
16 rationale offered is to promote competition.

17 Sometimes no discernable justification is offered
18 at all, and this is particularly the case when you've
19 already had an ETC approved and multiple ETCs follow as a
20 result. But this is not enough for rural markets. The Act
21 requires more. Our consumers require more and deserve more.

22 My written testimony lists a handful of specific
23 criteria that can be applied by the states as a minimum
24 standard to ensure that competitive entry will help rather
25 than hurt rural customers. Uniform national rules make it

1 easier for everyone to help ensure that high-cost support is
2 being used to further the goal of providing universal
3 service to all customers in rural areas. After all, it is
4 the customer who pays the price tag for universal service.

5 I urge you to recommend that the FCC articulate a
6 set of clear standards for deciding whether designating an
7 ETC would serve the public interest and provide a meaningful
8 enhancement to universal service for consumers. These
9 uniform national standard could then be consistently applied
10 by the states and enforced by the FCC to put CETCs and
11 incumbent LECs on a more neutral footing.

12 The designation process is so very urgently in
13 need of repair, that I suggest that you make this a priority
14 even over the other important issues that you are weighing
15 in this proceeding. The CETC designation process is one
16 that needs immediate attention. And solutions can be
17 achieved through relatively simple reforms. You have a
18 unique opportunity here to make needful changes to the
19 benefit of consumers.

20 I appreciate the opportunity to be here, and I
21 look forward to answering your questions.

22 COMMISSIONER ABERNATHY: Thank you, Mr. Glover.
23 Now we'll move on to John Metts, who's with the National
24 Telecommunications Cooperative Association. And thanks for
25 coming.

1 MR. METTS: Thank you. My name is John Metts and
2 I'm president of the National Telecommunications Cooperative
3 Association, NTCA. I'm also Chief Executive Officer of
4 Penasco Valley Telecommunications in Artesia, New Mexico. I
5 appreciate very much the opportunity to appear before you
6 today to discuss eligible telecommunication carrier
7 designations.

8 As a point of interest, NTCA represents more than
9 560 commercial and cooperative telecommunications companies.
10 The purpose of my testimony is to assist the joint board in
11 developing a public interest test for determining whether a
12 carrier should be designated an eligible telecommunication
13 carrier in a rural telephone company service area.

14 The goal of universal service is to provide
15 consumers with access to the nine supported services listed
16 in the definition of universal service. Congress included
17 no requirement that universal service support mechanisms
18 should be used to promote and finance competition.

19 What I'd like to do now is outline the seven
20 point public interest test that NTCA proposes for
21 designating ETCs in rural telephone service areas.

22 Point number one. Is the additional ETC
23 designation required to ensure that consumers living in the
24 rural ILEC service area have access to the nine supported
25 services listed in the definition of universal service?

1 Point number two. Would the carrier requesting
2 ETC designation be able to provide service to the entire
3 rural ILEC service territory?

4 Point number three. Do the potential benefits to
5 the rural service area, if any, of granting the ETC
6 designation outweigh the ultimate burdens on consumers that
7 will occur through the added growth in the federal and/or
8 state universal service funds?

9 Point number four. Is the carrier requesting
10 designation willing to demonstrate its costs to provide
11 universal service to consumers living in the rural ILECs
12 service territory?

13 Point number five. Would the ETC designation
14 result in excessive support to the requesting carrier based
15 on the amount of support distributed under the identical
16 support rule?

17 Point number six. If the carrier seeking ETC
18 designation is already offering rural customers universal
19 service at a rate at or below or slightly above the
20 comparable rate for supported services, then why is the
21 requesting carrier seeking universal service support dollars
22 when its rates are already comparable without support?

23 And point number seven. Is the carrier
24 requesting ETC designation willing to adhere to quality of
25 service guidelines or other state specific requirements?

1 NTCA recommends that the joint board embrace this
2 seven point public interest test and recommend its adoption
3 by the FCC and state commissions. This change is needed to
4 preserve universal service over the long term. There's an
5 obvious need to act soon.

6 In view of these facts, NTCA recommends that the
7 Commission and the states stay all ETC designation
8 proceedings until this joint board and the FCC adopt new
9 guidelines for determining the public interest in rural
10 telephone service areas.

11 I thank you for the opportunity to present our
12 recommendations.

13 COMMISSIONER ABERNATHY: Thank you very much.
14 And the last person on the panel, Mike Strand with the
15 Montana Universal Service Task Force. And we appreciate you
16 coming today. Thank you.

17 MR. STRAND: Thank you and good afternoon.
18 Again, for the record my name is Mike Strand. I'm counsel
19 for Montana Universal Service Task Force, or MUST.

20 I understand the purpose of this particular panel
21 is to focus on three issues. The first of these issues is
22 whether the FCC should adopt guidelines for state public
23 interest determinations. My response to this issue is that
24 the FCC should not adopt guidelines if the FCCs historic
25 position on the threshold requirements for ETC designation

1 is going to be embodied in those guidelines.

2 The FCC is on record stating that mere compliance
3 with the provisions of section 214(e)(1) of the Act is per
4 se in the public interest in cases involving non-rural
5 telephone company service areas. Section 214(e)(1) simply
6 requires a CETC applicant to offer the nine supported
7 services identified by the FCC throughout the service area
8 at issue.

9 However, the FCC's South Dakota declaratory
10 ruling states that CETCs do not even have to show that they
11 can provide service throughout the service area as a
12 prerequisite to designation. Therefore, the current public
13 interest guidelines from the FCC are that ETC applicants
14 need only provide the nine supported service to some portion
15 of the study area at issue.

16 If this is the standard that the FCC would
17 utilize in public interest guidelines for the states, then
18 MUST could not support such guidelines. If the guidelines
19 have real teeth, we might decide otherwise. In particular,
20 we believe that insufficient weight has been given to the
21 universal service principles laid out by Congress in section
22 2549b).

23 Not only have regulators been unusually selective
24 in picking and choosing from among the universal service
25 principle identified by Congress, they have also created new

1 universal service principles such as competitive neutrality
2 and using universal service funding to promote competition
3 in rural areas.

4 We at MUST can see no language in the universal
5 service provisions of the Act that would indicate that
6 Congress intended the use of the universal service fund in
7 this matter.

8 The second issue asked the panel to identify the
9 appropriate content and scope of the public interest
10 determination required under sections 214(e)(2) and
11 214(e)(6). Over the past 100 years, the United States has
12 developed the finest wire line telecommunications network in
13 the world and with the assistance of the REA loan program
14 and the universal service fund, this statement includes
15 rural America.

16 We at MUST do not believe that Congress wanted to
17 diminish the level of universal service from rural areas,
18 but rather maintain that level and improve upon it over
19 time.

20 That is why Congress very clearly stated that
21 universal service is to be preserved and advanced. Congress
22 also specified that the preservation and advancement of
23 universal service was to be based on very clearly delineated
24 principles set forth in section 254(b).

25 To be sure that the existing level of service in

1 rural areas was not degraded, Congress specifically required
2 a finding that additional ETC designations be in the public
3 interest in areas served by rural telephone companies.

4 The appropriate scope of the public interest
5 determination in ETC designations is therefore to first
6 ensure that the existing quality of telecommunication
7 services in rural areas is preserved. And second, that such
8 designation is consistent with all of the principles
9 enumerated by Congress in section 254(b) of the Act.

10 Unfortunately, our view is that the actions of
11 many regulatory bodies to date have, for the most part,
12 jeopardized universal service in rural America. These
13 regulatory entities have eviscerated the requirement that
14 CETCs provide service across an entire study area thereby
15 encouraging cream skimming.

16 They have ignored key universal service
17 principles identified by Congress such as the principle that
18 advance telecommunications and information services are to
19 be available to all areas of the nation.

20 They have endangered the current level of
21 telecommunications services in rural areas by defining
22 universal service as a paltry list of nine services without
23 any reference to the quality standards by which those
24 services are to be delivered, or the quality by which they
25 were delivered at the time of the Act's passage.

1 This definitional problem is then exacerbated by
2 providing universal service funds to competitors based on
3 the incumbent's costs erroneously assuming that the
4 competitor's level of service is fungable without provided
5 by the incumbent.

6 MUST believes that the most egregious effect of
7 these misguided policies has been the wholesale ETC
8 designation of wireless carriers that, in many cases,
9 provide an inferior level of service when compared to
10 services provided by wire line incumbents.

11 The third issue for this panel was whether
12 regulatory parity should be a guiding principle. Again, we
13 at MUST refer back to the public interest. The public
14 interest cannot be served if regulators do not have the same
15 information from CETCs for the purposes of designation and
16 certification as they are able to obtain from incumbent
17 ETCs.

18 Further, the regulatory burden for incumbents
19 causes very significant compliance costs. These costs are
20 included in the cost base from which distributions are made
21 from the universal service fund to incumbent ETCs. Since
22 funding is currently portable to competitors based on the
23 incumbent's costs, the recovery of regulatory costs is a
24 windfall for CETCs that do not bear these burdens.

25 The same is true for the provision of equal

1 access, which, contrary to the assertions of some of our
2 competitors, is a significant honorable cost to incumbents
3 creating yet another windfall for out competitors.

4 Therefore, the answer is yes, regulatory parity
5 should be a guiding principle, but the level of regulation
6 should be sufficient to ensure that the quality of universal
7 service is preserved at the level it existed as of the
8 passage of the Act, and then advanced in a manner consistent
9 with the universal service principles specifically set up
10 for by Congress in section 254(b).

11 Thank you and I'll be happy to answer questions.

12 COMMISSIONER ABERNATHY: Okay. Thank you very
13 much. And we'll now start the question and answer
14 session -- part of this session -- and we'll start down to
15 my left with Commissioner Adelstein.

16 COMMISSIONER ADELSTEIN: Thank you. And thank
17 you for being here all of the panelist. I have a couple of
18 questions. Let me start with -- you mentioned, Mr. Strand,
19 cream skimming and it's -- to the extent that it would occur
20 under a designating an ETC -- would be devastating for the
21 incumbent, it wouldn't be good for universal service for
22 whole service area.

23 I'm curious -- from all of you -- and
24 Commissioner Smith, you mentioned some things that I was
25 doing to prevent that -- what everybody's perspective is on

1 how both the FCC and state commissions can make an effort to
2 prevent that and making ETC designations, ensuring that they
3 aren't designated for areas that are essentially cream
4 skimming.

5 MR. STRAND: Well, since I brought the issue up,
6 I guess there are three things that I would say. Number
7 one, the FCC could withdraw its South Dakota declaratory
8 ruling, which would be the easiest way of solving the
9 problem. The Telecommunications Act very specifically says
10 that service must be provided throughout the study area, it
11 does not say, at some point in the future.

12 If you're not going to withdraw the South Dakota
13 declaratory ruling, then at least there must be some time
14 frame within which the build-out must occur and some penalty
15 for failing to meet that time frame. Currently, in the
16 South Dakota declaratory ruling, a CETC has essentially
17 forever to get to the point where they actually provide
18 service across the study area. And there's no penalty if
19 they ever fail -- if they fail to ever -- serve the entire
20 study area.

21 MR. THOMSEN: I'd like to rebut that just a
22 little bit here. The -- currently the wireless companies
23 throughout rural America -- and in particular I know very
24 much Montana because we own every license on the A side in
25 Montana and have been providing service there since 1992 --

1 we currently provide service to tens of thousands of
2 customers that do not have wire line service, that have
3 requested wire line service and have been told by the
4 wireless incumbents that they will provide that service if
5 you pay six, eight, ten, fifteen thousand dollars.

6 The rural telcos do not provide ubiquitous
7 service. They do not provide service to all people who want
8 service in their study areas. And they certainly provide
9 the opportunity, but it is -- the provision does not say you
10 will provide it unless you charge a certain amount of money
11 to put that money in and then you get that money back from
12 the universal service.

13 We currently provide significantly better
14 coverage throughout most of the states in which we provide
15 service, than the rural telcos do, just by the very fact
16 that we add a dimension, we add mobility, we are not stuck
17 to a single wire line that goes in a straight line and makes
18 curves in one place or another. We provide service where
19 consumers want to use it, not just in the places that the
20 telephone companies decide to provide it.

21 COMMISSIONER ADELSTEIN: Just a follow-up to
22 that: Mobility is clearly an advantage, but are you saying
23 that you provide more ubiquitous service, or you provide
24 service -- than the rural ILECs in the same community --
25 that your service is more comprehensive?

1 MR. THOMSEN: We provide significantly more
2 coverage than the ILECs do in the markets in which we
3 provide service, and in the markets for which we've applied
4 for universal service.

5 COMMISSIONER ADELSTEIN: By that you mean more
6 customers are covered by your system than by the rural
7 ILECs, assuming those areas that you are providing
8 service -- more --

9 MR. THOMSEN: In the areas that we're providing
10 service? Absolutely.

11 MR. STRAND: If I can reply to that comment.
12 It's one of the most ludicrous comments I think I've ever
13 heard. They clearly do not cover more areas than the rural
14 telephone companies and it's absurd for them to make that
15 representation.

16 They actually filed ETC application for the
17 entire State of Montana three years ago. The only evidence
18 of their coverage area was an eight and a half by eleven
19 piece of paper that took the outline of the State of Montana
20 and completely blocked it in with a black marker indicating
21 that they had service to every square inch of Montana.

22 Ultimately, they withdrew that application
23 because they got so many data requests, and rather than
24 respond to them, they withdrew their application. They have
25 now refiled, but just for the Qwest non-rural service areas.

1 And in their refiling, they're claiming that they
2 can only reach 85 percent of the customers in the Qwest
3 areas, which are the larger communities in Montana, which
4 makes one wonder what happened over the past three years?

5 Did they actually remove towers from some of the
6 more urban areas of the state so they could get down to 85
7 percent from the ubiquitous coverage they claimed three
8 years ago?

9 MR. THOMSEN: I believe the word would be
10 disengenuous and mis-speaking.

11 COMMISSIONER ABERNATHY: Do you want to respond
12 to that?

13 MR. SMITH: I feel like I'm back at the board
14 here. You are seeing the two different ends of the
15 perspective that we're certainly faced with. Particularly
16 in our market in Iowa with the 150-plus ILECs that I think
17 would take issue, or at least make comment on the fact that
18 they do a pretty good job of serving their exchange areas
19 and they often challenge the wireless providers to offer the
20 same.

21 I think fairly well known that the Iowa Utilities
22 Board demands universal or full coverage the service area.
23 We will not authorize a kind of a pick and choose coverage
24 application, so we're sensitive to the cream skimming.

25 We're also sensitive to the new technologies that

1 are coming forward with the wireless. It's not an apples to
2 apples comparison, and we're constantly struggling with how
3 do we afford ETC status and yet we can't wind up the
4 exchanges or the boundaries exactly, which I touched on in
5 my comment.

6 So that's been the genesis for our current rules,
7 making progress where we're trying to decide if -- and we're
8 taking comments right now from the industry on whether
9 wireless service areas should be less than the wire line
10 incumbent's historical service area.

11 Just initially we think this will possibly help
12 maximize the use of wireless services in giving these local
13 rural folks more service choices, so.

14 COMMISSIONER ADELSTEIN: Well, just one quick
15 follow-up. What do you do to enforce that? I mean, there's
16 a dispute here about what the coverage area is. I mean,
17 sometimes when I go home, you find a lot of patches
18 sometimes in wireless service areas, and it's hard to deny
19 that, and certainly even in urban areas you find these
20 things.

21 What do you do to enforce the requirement that
22 they be serving everybody in that service area, and where --
23 any suggestions as to how you can enforce that? What should
24 be done more by the FCC or by state commissions to do that?

25 MR. GLOVER: Could I respond to that question?

1 CenturyTel used to be in the wireless business. Up to a
2 year ago, we sold our wireless business. It's a frequent
3 thing that you drop through your networks, you have these
4 nice trucks with all these antennas on them, you frequently
5 test the quality of your coverage, and so you pretty much
6 know where your weak spots are and where your strong points
7 are.

8 And so I would submit that, as recently even as
9 the last month or so, you can see various reports that came
10 out from the United States General Accounting Office that
11 raised questions about the call quality, CMRS providers, it
12 talked about lack of coverage, limited network capacity,
13 dropped calls, poor sound quality.

14 And the report estimated that 22 percent of the
15 users were unable to successfully complete 10 percent or
16 more of their calls as a result of calls being dropped. And
17 even as recently as this second quarter, the wireless
18 industry has been fighting publishing service quality
19 standards.

20 When any incumbent would have to submit those on
21 a regular basis and have a what we call down south a come to
22 Jesus meeting if we had a problem with the Commission, I
23 think it would be appropriate, particularly for wireless
24 ETCs, that are receiving monies -- regulated monies -- to
25 publish their coverage, their service quality and so forth

1 and the various strength.

2 And I think they'll probably have it identified
3 by zones. They ought to be very strong in the urban areas
4 and it'll get weaker out at the rural areas until you hit a
5 new cell socket. So I think there are definitely practices
6 out there that could be implemented. It's just a matter of
7 putting them into place.

8 MR. SMITH: If I might for just a second -- I'm
9 sorry. Our -- at least my experience -- which is, you know,
10 in the life history of the board is certainly limited -- but
11 we haven't been concerned so much with the exchange coverage
12 as making sure people understand the difference between the
13 service they're being provided because there's a great mis-
14 education out amongst certain areas of our state that
15 dropping wire line and picking up wireless gives you the
16 exact same coverage, and they all think they're getting 911
17 service -- equal 911 service -- that -- things of that
18 nature.

19 Through various rate cases recently, the call --
20 the cry -- has been when the wire line wants to increase
21 their rates, well let's just all go wireless and that's
22 going to serve our -- solve our -- problems.

23 So the cream skimming isn't so much an issue in
24 Iowa, it's just making sure that the companies that are
25 competing for ETC status are offering comparable and

1 reasonable service to the local rural folks.

2 MR. STRAND: I think that quality issue is really
3 a key one. In fact, it's evident from the wireless
4 carriers' national advertising. They as much as admit that
5 their service quality is inferior. What -- Verizon
6 wireless' advertisement show a man saying over and over
7 again, Can you hear me now? Good. Can you hear me now?
8 Good. Can you hear me now?

9 Such an advertisement would never work for a wire
10 line telephone company because, of course, you can hear me
11 now on a wire line network. Everybody takes that for
12 granted. The only question from a wire line perspective is
13 whether you can hear a pin drop, not whether you can hear
14 me.

15 And then, of course, the Sprint wireless
16 advertisements that discuss how poor the service quality is
17 of their wireless competitors by showing amusing situations
18 such as the mother calling home and telling the sitter to
19 shower the children, she thought she heard flour the
20 children, so she comes home and finds these children dipped
21 in baking flour.

22 And that's what I think of the audacity of the
23 wireless industry, is something you cannot fault them on.
24 They take their Achilles heel, their inferior service
25 quality, and they put it right out in front and try to

1 address in multimillion dollar advertising campaigns.

2 COMMISSIONER ABERNATHY: Although -- I guess my
3 follow-up question would be, fine, if they're not getting
4 support. Right? I mean, if they're out there competing --
5 and it's an alternative service and they're not getting
6 subsidized -- it's a competitive environment, you either
7 find that the price point is right and you value mobility or
8 you don't.

9 The question for me really is, when a company
10 likes Western Wireless goes in to an area and says they want
11 ETC status, at that point is there a greater commitment? Is
12 there a greater obligation to resolve some these holes in
13 the network -- which admittedly all the carriers admit that
14 they exist, and they do -- I still have a wireless phone
15 because I like having it.

16 But how do you balance what was inherently
17 considered a, you know, a discretionary kind of service that
18 you either valued or didn't value versus when you go in an
19 seek ETC status? What are the differing obligations there?
20 What should the different obligations be?

21 MR. THOMSEN: We began making application, as I
22 mentioned, in 1998. At that time we had, on average,
23 about -- our customers used about 125 minutes of use per
24 customer per month. Today, five years later, that's 450
25 minutes of use per month.

1 The consumers are speaking with their feet and
2 with their vocal cords. They are using our product and they
3 are using our product in many cases as their primary
4 telecommunications device.

5 We did a survey of our -- of the customers we
6 have in the rural markets. We found that 30 percent of them
7 considered their wireless phone as their primary
8 telecommunications device. The number of phones with the
9 ILECs has been dropping. The number of phones with the
10 wireless carriers has been growing.

11 The comment that my friend at MUST made about the
12 advertisements that the cellular carriers make is a case in
13 point. The guy is walking down the street saying, Can you
14 hear me now? Can you hear me now? When was the last time
15 you saw a guy with a wire line phone walking down the street
16 saying, Can you hear me now? Can you hear me now? Of
17 course, you can't.

18 COMMISSIONER ABERNATHY: But that's not really
19 going -- the question that I have is, when you move from
20 competing in the wireless world -- no subsidy support,
21 you're just out there duking it out with the other wireless
22 providers, and, frankly, no service quality requirements and
23 very light touch regulation -- when you move into the ETC
24 world, and you're qualifying for support, do you view that
25 as requiring a different level of service or a different

1 type of build-out than what you would otherwise do?

2 MR. THOMSEN: We believe that, as my incumbents
3 earlier suggested, that, in fact, we have started doing
4 that. And that the consumers have responded to that by the
5 fact that they're now using four times as many minutes on
6 our system as they were on average five years ago when we
7 made our first applications.

8 We have built out significantly more parts of
9 rural America in the last five years, than we had built out
10 before. We have upgraded our systems to add capacity to
11 handle that number of calls. We've added digital, which has
12 allowed us to handle more calls and bring in new advanced
13 services, in some case, advanced services that the wire line
14 carriers cannot match.

15 And the most important point is, we're providing
16 the service where customers want it, not just where the
17 telephone company wants to provide it.

18 MR. ROWE: I'm -- I'd like to follow up question,
19 but I don't want to lose my place in the queue for my real
20 question.

21 COMMISSIONER ABERNATHY: Depends on how many sub-
22 parts there are to the follow-up question.

23 MR. ROWE: I'm going to make probably a futile
24 attempt to find some points in agreement between Mr. Thomsen
25 and Mr. Strand, so I hope you'll watch my back. Mr.

1 Thomsen, I heard you at the start to say that there were, in
2 fact, thousands -- or you know, you said tens of
3 thousands -- of lines unserved. Mr. Strand took strong
4 exception to that.

5 I wonder if the two of you would agree on the
6 following statement. In fact, there are -- specifically in
7 Montana -- substantial numbers of customers to whom
8 facilities are not deployed.

9 In the joint board review of covered services I
10 raised the issue of support for transport services as being
11 relevant to that, and at that point we attempted to identify
12 who, in fact, those customers were.

13 Generally, my conclusion was, that those were not
14 customers, but potential customers, living in mountainous
15 areas, generally in areas served by the tier one companies.
16 I was struck by the number tens of thousands, I assume
17 you're talking about a much larger than just Montana or
18 Maine or Vermont.

19 Conversely, the discussion of unserved customers
20 in areas served by a, for example, the MITS Companies, pro
21 agency and others, tends to be a question not of facilities
22 deployed -- the facilities are typically excellent, in fact,
23 DSL and above -- but is a question of customers who are
24 eligible who have facilities available, but who do not take
25 service. And there the strategies to reach those customers

1 have to do more with outreach, lifeline link up type issues.

2 Is that a fair summary of the state of the
3 network, first of all, and the state of customers
4 participating in services?

5 MR. STRAND: From our perspective, I think you
6 identified correctly that the tier one carrier, the Bell
7 operating company in Montana is the service area that
8 primarily has the customers that are not getting service and
9 they are the ones that typically have the high aid to
10 construction charges. There's no conceivable way that it's
11 anywhere near ten thousand in Montana, even with the
12 problems that the Bell company has.

13 MR. ROWE: And my comment actually wasn't even
14 focused on Montana there, but more broadly.

15 MR. STRAND: Right.

16 MR. ROWE: Would you agree or disagree with that?

17 MR. THOMSEN: I would generally agree with your
18 characterization, although, you know, as a good example, and
19 I think there are probably examples like this in Montana,
20 but I can only speak specifically to the experience we've
21 had on the Pine Ridge Indian Reservation, where we went in
22 and went to the FCC and asked for ETC designation and at
23 that hearing, the incumbent telephone carrier claimed that
24 everybody who wanted a phone had a phone on the reservation,
25 and that, in fact, if we were designated an ETC, they would

1 go out of business.

2 We were designated an ETC, we then added three
3 new cell sites to the Indian reservation, and we now have
4 raised the number of household receiving phone -- receiving
5 basic phone service -- from 25 percent that were there
6 before we came in, to 75 percent -- added 5,000 new
7 households who got their first telephone service.

8 And that's on one Indian reservation in the
9 corner of one state. There are other examples of that in
10 other places. And these are not places that are, you know,
11 these are not people that have a particularly large voice,
12 these are not people that are particularly looked at very
13 often.

14 They are, in fact, overlooked frequently by
15 commissions and by telephone companies. And they are the
16 people that are starting to receive basic telephone service
17 from wireless carriers, for the first time ever.

18 COMMISSIONER ADELSTEIN: If I could follow up.
19 That's my home state there. It just amazes me that you
20 would say there was only 25 percent penetration. I'd never
21 seen how I desperately tried to find the numbers on the Pine
22 Ridge Reservation as to what the penetration levels were.

23 I never heard anybody allege 25 percent. I've
24 heard allegations of, you know, maybe 50, 60, but even that
25 was disputed by the incumbent, and I never found good

1 evidence of it. What is the basis for that allegation?

2 MR. THOMSEN: My understanding is that there are
3 about 2500 lines to households that Golden West was
4 providing service to on the reservation. We are now
5 providing an additional 5,000 lines of service on the
6 reservation to households that did not have service before.

7 COMMISSIONER ADELSTEIN: So you say you're
8 offering twice as many lines now as Golden West in Pine
9 Ridge?

10 MR. THOMSEN: Yes, sir.

11 COMMISSIONER ADELSTEIN: I'll -- we'll discuss
12 that further. I'd like to see the documentation to that.

13 MR. THOMSEN: Okay.

14 MR. STRAND: Just as an extra point,
15 Commissioner, when Western Wireless applied for ETC
16 designation, the Crow Indian Reservation, which is one of my
17 clients, they allege that there was only 45 percent
18 penetration. The 2000 census just came out some time ago,
19 and indicated that the number was 87.5 percent penetration.

20 We purchased the exchanges on the Crow
21 Reservation from the Bell Company in 1994. Western Wireless
22 was using 1990 census data and was unwilling to even discuss
23 with us the possibility that we had improved service on the
24 reservation after we purchased the exchange.

25 MR. ROWE: To close out --

1 MR. THOMSEN: We're getting our numbers from the
2 reservations themselves, so I can only go on that.

3 MR. ROWE: I think it's worth noting that
4 probably most of the people in the room, including all the
5 panelists, everyone up here are deeply committed and they're
6 doing a great deal to promote access and deployment on
7 American Indian Reservations, and that's commendable
8 regardless of who's doing it.

9 COMMISSIONER ABERNATHY: Is it your turn?

10 MR. ROWE: Thank you. I cheated, didn't I?

11 COMMISSIONER ABERNATHY: You did, but it's all
12 right.

13 MR. ROWE: Back to the question at the start.
14 I'd like to hear from each of the panelists going down very
15 quickly. What, if anything, should the joint board -- what
16 approach should be taken -- federal standards on issues such
17 as the ones that Commissioner Boyle raised, federal
18 guidelines, or should the FCC ultimately be quiet so who
19 should make the decisions and house sweeping?

20 And then secondly, what specifically should be
21 included in any service standards or at a public test. And
22 if you could just move through very, very quickly. Give us
23 your list without too much editorializing.

24 MS. BOYLE: I think I addressed that. I said I
25 was reluctant to -- for the FCC to decide that there would

1 be any guidelines, and if they would, that they would be --
2 we would be able to construe them rather broadly.

3 COMMISSIONER ABERNATHY: That includes guidelines
4 as opposed to mandates. You would even want guidelines from
5 the federal level?

6 MS. BOYLE: If they were always construed as only
7 guidelines. I find in hearings that, well oftentimes we are
8 told the guidelines are what are actually -- they construe
9 them as mandates. Puts us in a position of conflict.

10 And so, at any rate, I think the Act fairly well
11 tells us what is expected. I think common sense continues
12 to tell us what public interest is and, as I said
13 earlier -- I think I was talking too long, though -- that
14 our environment changes, our economic environment changes.

15 If you would have said several years ago what our
16 public interest in this country, it would be much different
17 than it is today after 911. So those things need to be
18 always considered when you start telling us how to talk --
19 you know, what guidelines to follow.

20 When we talked about parity, it is hard for me to
21 understand why we should not require all companies to follow
22 the same service quality standards. I know the equal access
23 is very controversial, however, if you are going to pay a
24 company the same rate as you pay a land line, and they're
25 not requiring equal access, we all know that they get a

1 discount because they buy long distance in buckets.

2 Therefore, it seems unfair for us to ask for anything less.

3 MR. SMITH: And I think the Iowa board would
4 generally agree with the comments of Chairman -- Chairwoman
5 Boyle. In Nebraska there, we -- I mentioned in my opening
6 comments about universal service quality standards, that it
7 would be very difficult to employ nationwide service
8 standard requirements.

9 However, getting some sort of measurements on a
10 state by state basis -- each state has different
11 characteristics, certainly, and it's maybe not such a bad
12 consideration to look at applying standards uniformly within
13 a state. But, again, that -- looking at mandates, I think
14 most states would prefer to have a little leniency there in
15 evaluating their own particular phone markets.

16 And in terms of minimum services, I think we're
17 comfortable where the list is now. We might suggest
18 considering things such E911, however, just because with the
19 popularity and prevalency of wireless phone service out
20 there.

21 If people are, in fact, dropping their primary
22 lines and using only wireless service as their point of
23 contact with the world in telecommunications, then having
24 the ability to access emergency systems is very important.
25 And we -- that's a top for our board.

1 MR. THOMSEN: I would say, in general, we think
2 that the state commissions are doing a very good job of
3 interpreting the Telecommunications Act. As you've seen
4 from the comments from this panel, sometimes reading the
5 Telecommunications Act is like reading the Bible, you can
6 get it to say anything you want it to.

7 But the -- I think that the state commissioners
8 and the state commissions are in touch with their states
9 much more so than the FCC is, and that they know what serves
10 the public interest of their citizens better than someone
11 from Washington D.C. possibly does. And that, in general,
12 the FCC should be hands off on how they interpret what the
13 '96 Telecommunications Act to have said.

14 I will say that there are a number of things that
15 are required by -- required of -- incumbent telcos that were
16 put in place because they were basically in a monopoly type
17 situation, and those are things that were put in place to
18 protect the consumers from a monopolis using their powers to
19 do things that would be at a consumer.

20 Many of the those things are not particularly
21 applicable to a competitive carrier because, in fact, their
22 introducing competition, and once competition comes in, the
23 monopoly goes away, and there are things that may well need
24 to go away from the requirements that the ILECs have down
25 the road as competition continues to grow in these rural

1 markets.

2 MR. GLOVER: From ITTA's perspective, there are a
3 couple of clear reasons why we need standards. Number one,
4 we need standards to protect the consumer because the
5 consumer is footing the bill for these additional entrants
6 into the marketplace.

7 Number two, the lack of consistency between the
8 states with regard to ETC designations makes it very
9 difficult from a business planning standpoint. So, from an
10 industry standpoint, we need consistent standards so we can
11 understand as we predict and make capital investment.

12 With regard to our immediacy of the issue, we
13 would very much like for this board to make specific
14 recommendations on the standards because the flood gates of
15 ETC requests have opened, and there's a gold rush caught
16 mentality that's on with regard to people trying to seek
17 this kind of support.

18 With regard to the specific things that we
19 advocate, first of all, we'd like for the FCC to develop
20 rules that specify that competition itself is not sufficient
21 justification for an ETC/CETC designation. We would also
22 like for the states to explain to us when they find that
23 public -- an affirmation in terms of the public interest
24 test, what that public interest finding was.

25 Second, the rules should promote consumer benefit